Public Prosecutor v Arab Malaysian Finance Bhd

HIGH COURT (ALOR SETAR) — CRIMINAL REVISION NO 43-07 OF 2002
ZAINAL ADZAM JC
19 AUGUST 2003

Criminal Procedure *— Forfeiture — Dangerous drugs — Forfeiture of personal property — Procedure to be followed in forfeiture proceedings — Whether forfeiture proceedings criminal in nature and effect — Whether rules of civil procedure applicable — Whether court had jurisdiction to reinstate action once struck out*

Criminal Procedure *— Revision — Revisionary power of High Court — Whether court had jurisdiction to reistate action once struck out — Courts of Judicature Act 1964 s 3, Subordinate Courts Rules Act 1955 s 2, Criminal Procedure Code s 278*

One Chong Chee Wah was arrested on suspicion of trafficking in dangerous drugs. Following his arrest, the police seized a Proton Iswara Aeroback bearing registration WHA 6071 ('the motor vehicle'). Notices of intended forfeiture were duly served on the suspect and on the respondent. The respondent made a claim on the motor vehicle. The deputy public prosecutor ('the DPP') referred the respondent's claim to the sessions court. The sessions court issued a summons to the respondent to appear before the court. On the hearing date the DPP, one Encik Rahamatullah, appeared but the respondent's representative was absent. Due to their absence, the sessions court judge struck off the application. Counsel for the respondent informed the State Legal Adviser that the respondent intended to apply to the sessions court reinstate the summons. DPP Encik Rahamatullah replied that they had no objection to the application to reinstate the summons. The respondent filed the necessary application for reinstatement accompanied with an affidavit in support. At the hearing for reinstatement of the summons, nobody appeared on behalf of the Public Prosecutor. The respondent's affidavit explained their absence and averred that the DPP had agreed to the application in writing. A copy of the DPP's letter was exhibited. A copy of that letter had, in fact, been sent to, and received by, the sessions court. There being no affidavit in reply filed by the DPP, the sessions court thereupon reinstated the summons. The sessions court then adjourned the matter for the examination. The respondent's wrote to the State Legal Adviser informing of the order of reinstatement and of the date of the examination. By that letter they also offered the sum of RM1,500 as consideration for the release of the motor vehicle to them. DPP Rahamathullah, by a letter to Counsel for the respondent, replied that they were agreeable to offer. On the day of the examination, however, the DPP present, one Puan Zabidah bte Ahmad, raised an objection to the examination. She argued that when the sessions court struck off the summons, that decision was final. The sessions court had no further jurisdiction to reinstate the summons.

The matter could only be dealt with by the High Court. Counsel for the respondent replied that their application had been agreed to by the DPP earlier and the DPP had not appealed nor asked for a revision of the sessions court's order for reinstatement. The sessions court judge adjourned the matter to hear further arguments on the objections raised. The hearings were adjourned twice on the application of the DPP. Counsel for the respondent submitted at some length on the matter and, relying on the DPP's letter, prayed that a consent judgment be recorded. The DPP, one Encik Azeezi, appeared, informed court that he had nothing further to say and also prayed that for a consent judgment be recorded. The sessions court thereupon proceeded to make and record a consent judgment for the release of the motor vehicle to the respondent upon payment of the sum of RM1,500 as compensation. The DPP sought to revise the decision of the sessions court. Puan Zabidah bte Ahmad again argued that, since this was a criminal case and not a civil case, the sessions court could not reinstate the summons after having made an order to strike it off. Although the DPP did not object to the respondent's application for reinstatement, this did not mean that they consented to the application. Counsel for the respondent submitted that the issues in this reference were: (i) whether the decision of the sessions court was a 'judgment' within the definition of s 278 of the Criminal Procedure Code ('the CPC'); (ii) whether the rules of civil procedure were applicable to an application or matter that was criminal in nature; and (iii) whether the application before the sessions court was a criminal or a civil proceeding.

Held, dismissing the DPP's application for a revision but setting aside the order of the sessions court and remitting the matter back to the sessions court for a re-hearing:

(1) The cases cited by the DPP were not authorities for the proposition that proceedings under s 32(2) of the Act were criminal and not civil proceedings. The cases merely decided on the procedure to be followed in an application under s 32(2) of the Act. The issue before the High Court was not the procedure to be followed in such an application but whether the application in question was criminal or civil in nature (see p 320E–G); *Soong Chee Kong v PP* [1951] MLJ 5 followed, *Tang Kheng Teong & Anor v Public Prosecutor* [1992] 2 MLJ 489, *Kanagasavey a/l Sinayah v Public Prosecutor* [1995] 2 MLJ 238 and *Public Prosecutor v Cham Yoon Liang & Anor* (unreported) distinguished.

(2) The principles for determining whether an order is said to be made in a criminal case or matter and not in a civil case or matter are quite well established. The Supreme Court, briefly, laid down three important element, ie: (i) the order must be a final order, the test is whether it had a final effect of disposing the rights of the parties; (ii) it must involve the consideration of a crime or an

offence against the public law; and (iii) there must be a charge preferred before some court or judicial tribunal having or claiming to impose punishment for the offence. The present matter before the sessions court did not have any of the three aforesaid elements. The orders of the sessions court in striking out and subsequently reinstating the respondent's application were made within its jurisdiction and authority (see p 321D–G); *Ang Gin Lee v Public Prosecutor* [1991] 1 MLJ 498 followed.

(3) The definition of 'judgment' as applicable to the CPC was well-established and the important element was that the order in question must be a final order in the sense that it is final in its effect. The test for determining finality of an order was to see whether the judgment or order finally disposed of the rights of the parties. The order of the sessions court in striking out the respondent's application clearly did not have that element to enable it to be construed as a 'judgment' within the provisions of the CPC (see p 319E–F); *Public Prosecutor v Raymond Chia Kim Chwee & Anor; Zainal bin Hj All v Public Prosecutor* [1985] 2 MLJ 436 and *Saad bin Abas & Anor v Public Prosecutor* [1999] 1 ML] 129 followed.

(4) The actual decision to be made by the sessions court was to decide whether the property in question should be released to the claimant or be forfeited. It was only after the sessions court made such a decision that a judgment or a final determination relating to the issue before the court was made. As there was no such decision when the sessions court struck off the respondent's summons, the issues between the parties had not then been decided upon. Therefore, s 278 of the CPC was not applicable at this stage (see p 318F–G); *Md Alwin Mustapa & Ors v PP* [1999] 5 CL] 417, *Marzuki b Mokhtar v PP* [1981] 2 ML] 155 followed and *Datuk Harun bin Haji Idris v Officer-In- Charge, Pudu Prison* [1981] 2 ML] 72 distinguished.

(5) Even assuming that the respondent's application before the sessions court was a criminal proceeding, the Rules of the High Court 1980 are operative and apply equally to both civil and criminal proceedings. However these cases decided on the applicability of the civil procedure rules to criminal proceedings in the High Court and not in the subordinate courts. So the question was whether the position was the same in the subordinate courts (see pp 319H–320B); *Dato' Mohamed Hashim Shamsuddin v Attorney-General, Hongkong* [1986] 2 ML] 112, *Gapari bin Kitingan v Attorney General Malaysia* [1991] 1 ML] 159, *Ng Hong Choon v Timbalan Menteri Hal Ehwal Dalam Negeri, Malaysia & Anor* [1994] 1 ML] 562 and *Kunn Rekon Holdings Sdn Bhd v Public Prosecutor and other applications* [1996] 5 MLJ 261 followed.

(6) The Supreme Court had decided that the Rules of the High Court 1980 had been validly and properly enacted, in relation to both civil and criminal proceedings, a subsidiary legislation of its parent Act, the Court of Judicature Act 1964. Section 3 of the parent Act clearly defined 'proceedings' to include 'criminal proceedings'. Applying the same reasoning, the Subordinate Courts Rules 1980 was applicable to criminal proceedings in the subordinate courts because the parent Act of the Subordinate Court Rules 1980, the Subordinate Court Rules Act 1955, essentially provides the same definition for 'proceedings'. Thus the sessions court was acting properly within it authority, both when it struck off the summons and subsequently reinstated it, even assuming that the application before it was a criminal application. The sessions court could have acted under O 14 r 21 or under O 28 r 5 of the Subordinate Courts Rules 1980 (see p 320B–F); *Dato' Mohamed Hashim Shamsuddin v Attorney-General, Hongkong* [1986] 2 ML] 112 followed.

Obiter:

The procedure as adopted by the session court needs to be improved and tightened in order to comply with the requirements of s 32(2) of the Act. The respondent should at least be required to file an affidavit deposing on matters necessary to satisfy the court that they were lawfully entitled to the motor vehicle. Such an affidavit should exhibit the registration document of the motor vehicle and the hire-purchase agreement. The inspection certificate of the motor vehicle from the Jabatan Pengangkutan Jalan should also be exhibited (presumably by the police) to confirm that the chassis number and the registration number of the motor vehicle match and have not been tampered with (see p 314G–H).

[Bahasa Malaysia summary

Chong Chee Wah telah diberkas kerana disyaki mengedar dadah berbahaya. Berikutan penahanannya, pihak polis telah merampas sebuah Proton Iswara Aeroback dengan nombor pendaftaran WHA 6071 ('kenderaan motor itu'). Notis hasrat melucut hak telah disampaikan ke atas OKT dan responden. Responden telah membuat tuntutan ke atas kenderaan motor itu. Timbalan pendakwaraya ('DPP') telah merujuk tuntutan responden kepada mahkamah sesyen. Mahkamah sesyen mengeluarkan suatu saman kepada responden supaya hadir di mahkamah. Pada tarikh pendengaran saman itu, DPP, Encik Rahamatullah, hadir tetapi wakil responden tidak hadir. Memandangkan ketidakhadirannya, hakim mahkamah sesyen telah membatalkan tuntutan responden. Peguam responden memberitahu Penasihat Undang-undang Negeri hasrat responden yang ingin memohon kepada mahkamah sesyen menghidupkan semula tuntutan mereka. DPP Encik Rahamatullah menjawab bahawa mereka tiada sebarang bantahan kepada permohonan menghidupkan semula

tuntutan itu. Responden telah memfailkan permohonan menghidupkan semula dengan afidavit sokongan. Pada pendengaran permohonan hidup semula tuntutan itu, wakil dari pejabat pendakwa raya tidak hadir. Afidavit responden telah menjelaskan ketidakhadiran mereka dan memberitahu bahawa DPP telah bersetuju dengan permohonan itu secara bertulis. Sesalinan surat DPP itu dilampirkan. Satu salinan surat itu tela pun dihantar kepada, dan diterima oleh, mahkamah sesyen. Memandangkan tiada afidavit jawapan dari pihak DPP, mahkamah sesyen telah menghidupkan semula tuntutan responden. Mahkamah sesyen kemudian telah menangguhkan kes bagi pemeriksaan. Peguam responden menulis sekali lagi kepada Penasihat Undang-undang Negeri memberitahunya akan perintah menghidupkan semula itu dan tarikh pemeriksaan. Dalam surat yang sama responden telah menawarkan jumlah RM1,500 sebagai balasan penyerahan kenderaan motor tersebut kepada mereka. DPP Rahamathullah, dalam suatu surat kepada peguam responden, telah menjawab bahawa mereka bersetuju ke atas tawaran itu. Walau bagaimanapun, pada tarikh pemeriksaan, DPP yang hadir, Puan Zabidah bte Ahmad, telah membuat bantahan kepada pemeriksaan. Beliau berhujah bahawa apabila mahkamah sesyen telah membatalkan saman itu, keputusan itu adalah muktamad. Mahkamah sesyen tidak lagi mempunyai bidang kuasa bagi menghidupkan semula saman tersebut. Perkara tersebut hanya dapat dikendalikan oleh Mahkamah Tinggi. Peguam responden menjawab bahawa permohonan mereka telah dipersetujui pihak DPP dan DPP tidak membuat sebarang rayuan atau memohon penyemakan perintah mahkamah sesyen bagi menghidupkan semula itu. Hakim mahkamah sesyen telah menangguhkan perkara tersebut bagi hujah-hujah lanjut atas bantahan yang diberikan. Perbicaraan ditangguhkan dua kali di atas permohonan DPP. Kaunsel telah berhujah panjang lebar dan, memandangkan surat DPP tersebut, memohon agar suatu perintah persetujuan dirakamkan. DPP, Encik Azeezi, telah hadir, memberitahu mahkamah bahawa beliau tiada sebarang hujah lanjut dan juga memohon agar suatu perintah persetujuan dirakamkan. Mahkamah sesyen terus membuat dan merakamkan suatu perintah persetujuan bagi pelepasan kenderaan motor itu kepada responden di atas bayaran jumlah RM1,500 sebagai pampasan. DPP memohon agar keputusan mahkamah sesyen ini disemak semula. Puan Zabidah bte Ahmad sekali lagi berhujah bahawa, memandangkan yang ini merupakan suatu kes jenayah dan bukannya kes sivil, maka mahkamah sesyen tidak boleh membuat suatu perintah menghidupkan semula setelah membuat suatu perintah membatalkan saman itu. Walaupun DPP telah mengatakan beliau tiada sebarang bantahan kepada permohonan responden bagi menghidupkan semula saman itu, ini tidak bermakna beliau bersetuju dengan permohonan responden itu. Peguam responden berhujah bahawa isu dalam penyemakan ini adalah: (i) sama ada keputusan mahkamah sesyen itu suatu 'penghakiman' menurut definasi s 278 Kanun Acara Jenayah

A B C D E F G H I

('KAJ'); (ii) sama ada aturan bagi prosedur sivil berapplikasi kepada suatu permohonan atau perkara prosiding jenayah; dan (iii) sama ada permohonan di hadapan mahkamah sesyen itu adalah suatu prosiding jenayah ataupun sivil.

Diputuskan, menolak permohonan DPP bagi penyemakan semula tetapi mengenepikan perintah mahkamah sesyen itu dan menghantar perkara kembali kepada mahkamah sesyen bagi pendengaran semula:

(1) Kes-kes yang dirujuk DPP bukannya authoriti bagi cadangan bahawa prosiding di bawah s 32(2) Akta itu dalam prosiding jenayah dan bukannya prosiding sivil. Kes-kes itu semata-mata memutuskan prosedur yang perlu diikuti dalam suatu permohonan di bawah s 32(2) Akta itu. Isu di hadapan Mahkamah Tinggi bukannya prosedur yang perlu diikuti dalam suatu permohonan tetapi persoalan sama ada tindakan ini suatu prosiding sivil atau prosiding jenayah (lihat ms 320E–G); *Soong Chee Kong v PP* [1951] MLJ 5 diikut, *Tang Kheng Teong & Anor v Public Prosecutor* [1992] 2 MLJ 489, *Kanagasavey a/l Sinayah v Public Prosecutor* [1995] 2 MLJ 238 and *Public Prosecutor v Cham Yoon Liang & Anor* (unreported) dibexa.

(2) Prinsip bagi mengenal pasti sama ada sesuatu perintah itu dibuat dalam suatu prosiding jenayah ataupun prosiding sivil adalah jelas. Mahkamah Agong telah mengenalpasti tiga unsur penting iaitu: (i) perintah tersebut hendaklah suatu perintah muktamad, ujiannya sama ada ia melupuskan hak pihak-pihak secara muktamad; (ii) ia perlu melibatkan suatu pertimbangan jenayah atau kesalahan terhadap undang-undang; dan (iii) perlu wujudnya suatu pertuduhan dikemukakan di hadapan suatu mahkamah atau tribunal kehakiman yang mempunyai bidang kuasa menjatuhkan hukuman untuk kesalahan tersebut. Perkara di hadapan mahkamah sesyen dengan jelas tidak mengandungi unsur-unsur ini. Perintah mahkamah sesyen dalam membatalkan dan seterusnya menghidupkan semula saman responden dibuat dalam bidang kuasa dan authoritinya (lihat ms 321D–G); *Ang Gin Lee v PP* [1991] 1 MLJ 498 diikut.

(3) Definasi 'keputusan' yang digunakan dalam KAJ adalah jelas dan unsur yang penting adalah sama ada perintah itu adalah muktamad pada hakikatnya. Ujian bagi mengenalpasti sama ada sesuatu perintah itu muktamad adalah supaya mengenalpasti sama ada perintah atau penghakiman itu menyelesaikan secara muktamad hak pihak-pihak. Perintah mahkamah sesyen dalam membatalkan saman responden dengan jelas tidak menyelesaikan haknya, maka tidak dapat ditafsir sebagai suatu 'keputusan' di bawah KAJ (lihat ms 318F–G); *Public Prosecutor v Raymond Chia Kim Chwee & Anor; Zainal bin Hj All v Public Prosecutor* [1985] 2 MLJ 436 and *Saad bin Abas & Anor v Public Prosecutor* [1999] 1 MLJ 129 diikut.

(4) Keputusan sebenarnya yang perlu dibuat mahkamah sesyen adalah memutuskan sama ada harta-benda tersebut harus dilepaskan kepada penuntut atau dilucut hak. Hanyalah selepas mahkamah sesyen membuat keputusan ini maka suatu penghakiman atau keputusan muktamad berkaitan dengan isu di hadapan mahkamah telah dibuat. Memandangkan yang tiada sebarang keputusan sebegitu semasa mahkamah sesyen telah membatalkan saman responden, maka isu antara pihak-pihak belum lagi diputuskan. Maka, s 278 KAJ tidak terpakai pada tahap ini (lihat ms 318F–G); *Md Alwin Mustapa & Ors v PP* [1999] 5 CL] 417, *Marzuki bin Mokhtar v PP* [1981] 2 ML] 155 diikut dan *Datuk Harun bin Haji Idris v Officer-In- Charge, Pudu Prison* [1981] 2 MLJ 72 dibeza.

(5) Jikapun diandaikan permohonan responden di hadapan mahkamah sesyen adalah suatu prosiding jenayah, Kaedah-Kaedah Mahkamah Tinggi 1980 beroperasi and terpakai ke atas prosiding sivil mahupun prosiding jenayah. Walau bagaimanapun kes-kes ini hanya menyentuh pemakaian aturan prosedur sivil kepada prosiding jenayah dalam Mahkamah Tinggi dan bukannya dalam mahkamah rendah. Maka persoalan adalah sama ada kedudukannya adalah sama dalam mahkamah rendah (lihat ms 319H–320B).; *Dato' Mohamed Hashim Shamsuddin v Attorney-General, Hongkong* [1986] 2 ML] 112, *Gapari bin Kitingan v Attorney General Malaysia* [1991] 1 ML] 159, *Ng Hong Choon v Timbalan Menteri Hal Ehwal Dalam Negeri, Malaysia & Anor* [1994] 1 ML] 562 dan *Kunn Rekon Holdings Sdn Bhd v Public Prosecutor and other applications* [1996] 5 MLJ 261 diikut.

(6) Mahkamah Agong berpendapat bahawa Kaedah-Kaedah Mahkamah Tinggi 1980 telah diperbuat dengan sah dan wajar, berkaitan prosiding sivil mahupun prosiding jenayah, sebagai enekmen tambahan kepada Akta asalnya, Akta Mahkamah Penghakiman 1964. Seksyen 3 Akta asal tersebut dengan jelas mendefinasikan 'prosiding' supaya meliputi 'prosiding jenayah'. Dengan menggunakan alasan yang sama, maka Kaedah-Kaedah Mahkamah Rendah 1980 terpakai kepada prosiding jenayah dalam mahkamah rendah memandangkan yang Akta asal Kaedah-kaedah Mahkamah Rendah 1980, Akta Kaedah-Kaedah Mahkamah Rendah 1955, pada asasnya memberikan definasi yang sama bagi 'prosiding'. Maka mahkamah sesyen telah bertindak wajar dalam bidangkuasanya, semasa membatalkan saman responden mahupun seterusnya apabila menghidupkan semula saman tersebut, walaupun diandaikan prosiding yang dihadkannya itu suatu prosiding jenayah. Mahkamah sesyen dapat bertindak di bawah A 14 k 21 atau di bawah A 28 k 5 Kaedah-kaedah Mahkamah Rendah 1980 (lihat ms 320B–E); *Dato' Mohamed Hashim Shamsuddin v Attorney-General, Hongkong* [1986] 2 ML] 112 diikut.

Obiter:

Prosedur yang harus diterima pakai mahkamah sesyen perlu dimajukan an diketatkan supaya mematuhi peruntukan s 32(2) Akta itu. Responden sekurang-kurangnya perlu memfailkan suatu afidavit mendeposkan perkara yang perlu bagi menyakinkan mahkamah bahawa ia berhak kepada milikan kenderaan motor itu. Sesuatu afidavit itu harus melampirkan buku pendaftaran kenderaan motor itu dan perjanjian sewa-beli. Sijil pemeriksaan kenderaan motor itu dari Jabatan Pengangkutan Jalan juga harus dilampirkan (mungkin oleh pihak polis) supaya mengesahkan yang nombor chassis dan nombor pendaftaran kenderaan motor itu adalah sama dan tidak ditukar.]

Notes

For cases on the forfeiture of dangerous drugs, see 5 *Mallal's Digest* (4th Ed, 2001 Reissue) paras 1652–1672.

For cases on the revisionary powers of the High Court, see 5 *Mallal's Digest* (4th Ed, 2001 Reissue) paras 2757–2768.

Cases referred to

Amand v Home Secretary & Anor [1943] AC 147 (refd)

Ang Gin Lee v PP [1991] 1 MLJ 498 (folld)

Dato' Mohamed Hashim Shamsuddin v Attorney-General, Hongkong [1986] 2 MLJ 112 (folld)

Datuk Harun bin Haji Idris v Officer-In-Charge, Pudu Prison [1981] 2 ML] 72 (distd)

Gapari bin Kitingan v Attorney General, Malaysia [1991] 1 MLJ 159 (folld)

Kanagasavey a/l Sinayah v PP [1995] 2 ML] 238 (distd)

Kunn Rekon Holdings Sdn Bhd v PP and other applications [1996] 5 MLJ 261 (folld)

Marzuki bin Mokhtar v PP [1981] 2 MLJ 155 (folld)

Md Alwin Mustapa & Ors v PP [1999] 5 CL] 417 (refd)

Mohd Dalhar bin Redzwan & Anor v Datuk Bandar, Dewan Bandaraya Kuala Lumpur [1995] 1 MLJ 645 (refd)

Ng Hong Choon v Timbalan Menteri Hal Ehwal Dalam Negeri, Malaysia & Anor [1994] 1 ML] 562 (folld)

PP v Cham Yoon Liang & Anor unreported (refd)

PP v Raymond Chia Kim Chwee & Anor; Zainal bin Hj All v PP [1985] 2 MLJ 436 (folld)

Saad bin Abas & Anor v PP [1999] 1 ML] 129 (folld)

Tang Kheng Teong & Anor v PP [1992] 2 ML] 489 (distd)

Legislation referred to

Criminal Procedure Code ss 278, 307(1)
Criminal Procedure Code [Brunei] s 240
Courts of Judicature Act 1964 s 3
Customs Enactment 1937 s 106
Dangerous Drugs Act 1952
Dangerous Drugs (Forfeiture of Property) Act 1988 ss 14, 25(2), 31, 32(1)(c), (2), 34
Rules of the High Court 1980
Subordinate Courts Rules 1980 O 14 r 21 and O 28 r 5
Subordinate Courts Rules Act 1955 s 2

Zabidah bte Ahmad (Deputy Public Prosecutor) for the applicant.
Burhanudeen Abdul Wahab (*Burhan & Clemons*) for the respondent.

Zainal Adzam JC: This is an application by the deputy public prosecutor ('DPP') to revise the decision of the session court is respect of a reference by the public prosecutor under s 32(2) of the Dangerous Drugs (Forfeiture of Property) Act 1988 ('the Act'). The circumstances leading to this application need to be set out in some detail to enable it to be fully appreciated. They are as follows:

On 11 April 2001, Chief Inspector Ismail bin Daud from Jabatan Narkotik, Ibu Pejabat Polls Kontingen, Kedah arrested one Chong Chee Wah suspected to be involved with trafficking of dangerous drugs. Following that arrest, on 22 April 2001, Chief Inspector Mohd Rosni bin Mohd Lazim from Bahagian Perlucuthakan Harta, Jabatan Narkotik, Ibu Pejabat Polis Kontingen, Kedah seized a motor vehicle, a Proton Iswara Aeroback bearing registration WHA 6071. Notices under s 25(2) of the Act were duly served by the police on the suspect and Arab Malaysia Finance Berhad, Kuala Lumpur ('the respondent') on 28 May 2001 and 26 June 2001 respectively. Only the respondent made a claim on the motor vehicle to the police, ie by a letter dated 10 July 2001. On 26 July 2001, the DPP referred the respondent's claim to the session court pursuant to s 32(2) of the Act. The session court issued a summon to the respondent to appear before the court on 5 September 2001.

On 5 Septemer 2001, Encik Abdul Halim b. Tasin appeared on behalf of the respondent and DPP Encik Azizul represented the public prosecutor. The matter was postponed to 8 December 2001. However, on 8 December 2001 the matter was further postponed as the session court judge was on emergency leave.

On the next hearing date, ie 6 January 2002, DPP Encik Rahamahtullah appeared but the respondent's representative was absent. Due to their absence, the session court judge struck off the application. By a letter dated 27 January 2002, the respondent's lawyer informed the State Legal Adviser that the respondent intended to apply to the session court reinstate their application. DPP Encik Rahamatullah replied by a letter dated 28 January 2002 (date wrongly typed as '28 July 2002') that they had

A no objection to the respondent's application to reinstate the matter. On 17February 2002, the respondent filed at the session court a notice of application for the reinstatement accompanied with an affidavit in support. The session court fixed the date for hearing of the application as 9 March 2002.

B On 9 March 2002, Cik Shakiroh appeared on behalf of the respondent but nobody appeared on behalf of the public prosecutor, The respondent's affidavit explained their absence on 6 January 2002 and in para 10 averred that the DPP had agreed to the application in writing and a copy of the letter dated 28 January 2002 was exhibited. A copy of that letter was in fact sent to and received by the session court. The session court thereupon reinstated C the application, there being no affidavit in reply filed by the DPP. The session court adjourned the matter to 16 April 2002 for the examination. The respondent's lawyer sent a letter dated 11 March 2002 to the State Legal Adviser informing about the order of reinstatement by the session court and the date of the examination as 16 April 2002. By that letter, they also suggested the amount of RM1,500 as consideration for the release of D the motor vehicle to them. DPP Rahamathullah by a letter to the respondent's lawyer dated 14 March 2002 replied that they were agreeable to offer of RM1,500 as compensation for the motor vehicle to be released to the respondent.

On 16 April 2002 at the session court, DPP Puan Zabidah bte Ahmad E however raised an objection to the examination, stressing that by virtue of s 278 of the Criminal Procedure Code ('the CPC') when the session court struck off the application, that decision was final and the session court had no further jurisdiction to reinstate the application. The matter, according to her can then only be dealt with by the High Court. The learned DPP cited the case of *Datuk Harun bin Haji Idris v Officer-In-Charge, Pudu Prison* F [1981] 2 ML] 72 to support her contention. Encik Burhanudeen on behalf of the Respondent replied that their application was agreed upon by the DPP earlier and the DPP did not appeal nor ask for revision against the session court's order for reinstatement.

The session court judge adjourned the matter to 29 April 2002 to hear G further arguments on objection raised. The hearing on 29 April 2002 however was adjourned twice on the application of the DPP to 15 May 2002 and 28 May 2002 respectively. On 28 May 2002, DPP Encik Azeezi appeared for the public prosecutor and Encik Burhanudeen appeared for the respondent. Encik Burhanudeen submitted at some length on the matter and at the end, obviously relying on the DPP's letter dated 14 March H 2002, prayed for a judgment by consent to be recorded. The DPP informed court that he had nothing to say in reply and in fact also prayed for a consent judgment be recorded. The session court thereupon proceeded to make and record a consent judgment for the release of the motor vehicle to the respondent with a condition that the respondent pay to the government a sum of RM1,500 as compensation for the release.

I

Before going to the substance of the complaint of the DPP, I pause here to make some observation on the final order made by the sssion curt on the matter. The duty of the session court during the examination under s 32(2) of the Act was to hear the DPP and the applicant who had made a claim in writing earlier by virtue of s 32(1)(c) of the Act. If after the examination the session court is satisfied that the motor vehicle is not involved with any offence under the Act or the Dangerous Drugs Act 1952 and that it is not an illegal property under the Act, the session court can only make one of two orders, namely, either order the release the motor vehicle to the respondent upon the respondent showing proof that they are the lawful owner or in any other case, order the property to be forfeited.

I am unable to find any provision in the Act for any compensation to be paid to the government or any other party when the court order the release of a property under s 32(2) of the Act. On the requirement under that provision that the court should be satisfied that the motor vehicle was not involved in any offence under the Act or the Dangerous Drugs Act 1952 and that it was not an illegal property under the Act, the session court obviously relied on the statement by the DPP regarding that matter in their application for the reference. That was perfectly appropriate as the DPP is legally in charge of prosecution and therefore the proper authority to state those matters.

However, on the requirement that the respondent as the claimant to the motor vehicle proof that they are lawfully entitled thereto, in the record of the session court there is only a copy of the respondent's letter to the police dated 10 July 2001 (exhibited by the DPP in the same application). It is highly questionable whether that copy is sufficient 'proof' as required under s 32(2) of the Act. Apart from the need to show the evidence to the satisfaction of the court, this requirement appears to be quite important as, inter alia, in the circumstances of this case at least, the police could have summarily released the motor vehicle to the respondent under s 31 of the Act without having recourse to s 32(2) of the Act. Also the term 'proof' is conspicuously absent on the earlier requirement of s 32(2) that I mentioned and in s 31, unlike the requirement on a claimant to the property in question ins 32(2) of the Act.

The procedure as adopted by the session court thus needs to be improved and tightened in order to comply with the requirement of s 32(2) of the Act. The respondent should at least be required to file an affidavit deposing on the relevant matters necessary to satisfy the court that they are lawfully entitled to the motor vehicle. The affidavit should exhibit the registration document of the motor vehicle and the hire-purchase agreement. The inspection certificate of the motor vehicle from the Jabatan Pengangkutan jalan should also be exhibited (presumably by the police) to confirm that the chassis number and the registration number of the motor vehicle matched according to their record and has not been tampered with. Otherwise, I fail to see how the session court can make a proper decision as required under that provision to release the motor vehicle. However, as mentioned earlier, all these do not form the substance of the complaint of the DPP before me against the order made by the session court. So I will leave these matters aside for the time being.

A I now turn to the actual complaint of the learned DPP against the order made by the session court which forms the subject matter of this application for revision before me. The complaint was solely directed to the session court's order on 9 March 2002 to reinstate the respondent's application that was earlier struck off on 6 January 2002. Before this court and indeed before the session court below, DPP Puan Zabidah bte Ahmad argued that the
B session court cannot reinstate the company's application after making an order to strike off the application since it was a criminal and not a civil case; as such s 278 of the CPCprohibits the session Court from doing so. Again as in the lower court, the DPP relied on the decision of *Datuk Harun bin Haji Idris v Officer-In-Charge, Pudu Prison*. The learned DPP conceded that
C before the session court they did not object to the respondent's application for reinstatement. However, she argued that by not objecting to the respondent's application did not mean that they agreed with application. She further argued that the Session Court should not have regarded the issue of the non-objection by the DPP as meaning that the DPP consented to the application.

D This argument by the learned DPP need to be disposed off by me immediately as in my opinion it is fallacious. I am at a loss as to what the learned DPP meant when she said that by not objecting it did not mean that they agreed with the application. This is a classic case of trying to establish a distinction without any difference. It is also not true that they did not
E agree to reinstatement. The letter from the DPP's office dated 28 January 2002 (date wrongly typed as '28 July 2001') replying to the respondent's lawyer with a copy to the session court was quite explicit. Not only was the respondent's application agreed to but it was also agreed that the examination hearing should go on. I reproduce the contents as from the session court file:

F

Ruj Tuan : BCAS/AMFB/001-0102
Ruj Kami : PUN(K))/06/2002
Tarikh : 28 Julai 2002

G

Tetuan Burhan & Clemons,

Peguambela dan Peguamcara,

No 1539, 2nd Floor,

H Jalan Sultan Badlishah,

05000 Alor Setar,

Kedah Darul Aman.

Tuan,

I

MAHKAMAH SESYEN DI ALOR SETAR

SAMAN NO : 64-2-2001

TARIKH PERBICARAAN : 6-1-2002
KENDERAAN NO : WHA 6071

Kami merujuk kepada perkara di atas dan surat tuan bertarikh 27/1/2002.

2 Pihak kami tidak mempunyai apa-apa bantahan terhadap permohonan pihak tuan untuk menghidupkan semula (reinstate) tindakan tersebut dan seterusnya tindakan tersebut dibicarakan di Mahkamah.

Sekian, terima kasih.

"BERKHIDMAT UNTUK NEGARA"

Saya yang menurut perintah,

(tt)

RAHAMATHULLAH BIN BAHARUDEEN
TIMBALAN PENDAKWA RAYA
NEGERI KEDAH DARUL AMAN.

This was further confirmed by the DPP's letter to the respondent's lawyer's letter dated 14 March 2002 agreeing to the respondent's offer of compensation and to record a consent judgment for the release of the motor vehicle which is reproduced as follows:

Ruj Kami : PUN(K)]/06/2002( )
Tarikh :14 Mac 2002

Tetuan Burhan & Clemons,
Peguambela dan Peguamcara,
No 1539, 2nd Floor,
Jalan Sultan Badlishah,
05000 Alor Setar, Kedah Darul Aman.

Tuan,

DALAM MAHKAMAH SESYEN DI ALOR SETAR
SAMAN NO: 64-2-2001

A KENDERAAN NO: WHA 6071

Perkara di atas dan surat Tuan bertarikh 1 1/3/2002.

2 Saya telah meneliti surat Tuan dan tawaran yang dibuat dan setelah
B mempertimbangkan, pihak kami bersetuju dengan tawaran sebanyak RM1,500 (Satu Ribu Lima Ratus Sahaja) dan sebagai balasannya kereta tersebut dipulangkan kepada pihak tuan.

Penghakiman Persetujuan ini akan direkodkan di Mahkamah pada 16/4/2002
C sepertimana tarikh yang telah ditetapkan.

Sekian, terima kasih.

D "BERKHIDMAT UNTUK NEGARA"

Saya yang menurut perintah,

(tt)

E RAHAMATHULLAH BIN BAHARUDEEN
TIMBALAN PENDAKWA RAYA
NEGERI KEDAH DARUL AMAN

F All these give the lie to the learned DPP's contention before me on the issue.

The session court, the learned DPP further argued, should have considered or realized that the application before it was a criminal case and not a civil case. Paragraphs (1) and (2) of the headnote under 'Held' of the decision of Vincent J in *Tang Kheng Teong & Anor v Public Prosecutor* [1992] 2 ML] 489 was cited to support her argument that an application under
G s 32(2) of the Act is a criminal case or matter. Another authority cited by the learned DPP was the decision of Jeffrey Tan JC (as His Lordship was then) in *Kanagasavey a/l Sinayah v Public Prosecutor* [1995] 2 MLJ 238. In this case the learned judge cited with approval Vincent J's decision in the earlier case. Section 14 of the Act was also referred to by the learned DPP
H to show that the argument of the respondent's lawyer that the application under s 32(2) of the Act was a civil matter was baseless.

It was also argued that it was wrong for the session court judge to strike out the application on the absence of the respondent. The duty of the session court then, according to the learned DPP was to proceed to hear the application and make the appropriated decision. The unreported case of
I *Public Prosecutor v Cham Yoon Liang & Anor* was cited in support of her argument. The passage of Mohtar Abdullah J's (as his Lordship was then) decision in that case that was cited reads as follows:

> Saya berpuashati bahawa perintah pembatalan rujukan adalah salah di sisi undang-undang. Oleh yang demikian perintah hakim mahkamah sesyen untuk membatalkan rujukan ini adalah diketepikan. Rujukan ini adalah dihidupkan semula (reinstated) dan dihantar balik (remitted) kepada mahkamah sesyen untuk dibicarakan dalam tempoh 30 hari dari hari ini. Hakim mahkamah sesyen hendaklah membuat keputusan mengikut kehendak s 32(2) Akta ini untuk sama ada melepaskan harta yang disita itu kepada orang-orang yang menuntutnya ataupun melucuthakkan harta itu.

Finally, in support of her arguments, the learned DPP cited the headnote under 'Held' para (3) of the case of *Kanagasavey a/l Sinayah v Puclic Prosecutor* which reads as follows:

> ... The language is s 34 of the Act is both clear and unambiguous in that in proceedings under the Act, the Act must be construed to give effect to its intent. It is explicit that judicial interpretation or any other construction is excluded save as to give effect to the purposes of the Act.

Encik Burhanudeen for the respondent his submission before me listed the issues in this reference as follows:

(i) whether the decision of the session court on 6 January 2002 falls within the definition of 'judgment' in s 278 of the CPC;

(ii) whether civil procedure is applicable to an application or matter that is criminal in nature; and

(iii) whether the application before the session court was a criminal or a civil proceeding.

The abovesaid list is to me an accurate statement of the issues in this reference.

On the first issue, Encik Burhanudeen argued that the actual decision to be made by the session court under s 32(2) of the act was to decide whether the property in question should be released to the claimant or to be forfeited. It is only after the session court has made such a decision that a judgment or a final determination relating to the issue before the court is made. As there was no such decision when the session court struck off the respondent's application, Encik Burhanudeen submitted that the issues between the parties were then not yet decided upon. Therefore, he argued that s 278 of the CPC was not applicable at that stage. There is merit to this argument as can be seen from decided cases, some cited by Encik Burhanudeen on the definition of 'judgment' in a criminal proceeding.

The case of *Md Alwin Mustapa & Ors v PP* [1999] 5 CL] 417 from Brunei was cited where Denys Roberts CJ considered s 240 of the Brunei Criminal Procedure Code which is in pari materia with s 278 of our CPC. The passage of the judgment relied on (at p 424) states:

> In *Ratanlalal and Dhirajlal's Code of Criminal Procedure* (13th Ed, 1987), at p 384 the authors observe, in commenting upon s 362 of Indian CPC which dealt with the alteration of review of a 'judgment or final order' —

> In order to constitute judgment (in the Code) there must be an investigation of the merits of the case on evidence and after hearing the arguments. Where, however, the order is passed summarily without consideration of the entire evidence as in the case of an order of discharge, it will not obviously amount to a judgment.

I accept this definition of 'judgment'.

His Lordship in that case referred to the case of *Marzuki bin Mokhtar v Public Prosecutor* [1981] 2 MLJ 155 in which Thong J adopted the definition of the word 'judgment' by Sarkar in *Commentaries on the Code of Criminal Procedure* (1973) as indicating the final order in a trial terminating in the conviction or acquittal of the accused.

The Federal Court case of *Datuk Harun bin Haji Idris v Officer-In-Charge, Pudu Prison* relied on by the learned DPP is of no assistance to her submission. Although this case is an authority on s 278 of the Criminal Procedure Code, the issues in that case were totally different from the present case. In that case, the alteration done was not to the actual decisions or judgments made against the appellant but merely rectification to the relevant warrant of committal with the sole purpose of making them conform with the actual decisions on the sentences made by the court. The Federal Court ruled in that case that functus officio under s 278 of the CPC does not arise as what transpired was an administrative act relating to the drawing up of the proper warrant of committal. In any event, the definition of 'judgment' as applicable to the CPC is well established and the important element common in all the authorities available is that the order in question must be a final order in the sense that it is final in its effect and the test for determining finality of an order is to see whether the judgment or order finally disposes of the rights of the parties (see *Public Prosecutor v Raymond Chia Kim Chwee & Anor; Zainal bin Hj All v Public Prosecutor* [1985] 2 MLJ 436 and *Saad bin Abas & Anor v Public Prosecutor* [1999] 1 ML] 129). The order of the session court in striking out the respondent's application clearly do not have that element to enable it to be construed as a 'judgment' within the provisions of the CPC. That should have effectively disposed off the complaint of the learned DPP. Unfortunately however, that is not the end of the matter. The further issue now is whether the session court acted properly in reinstating the application, if the matter was, as presupposed by the learned DPP, a criminal matter or proceeding. This brings me to the second issue.

Assuming for a moment, that the respondent's application before the session court was a criminal proceeding, the question is can the session court act on its authority as conferred by the Subordinate Courts Rules 1980 to reinstate, let alone strike off in the first place, the respondent's application. Encik Burhanudeen cited the case of *Kunn Rekon Holdings Sdn Bhd v Public Prosecutor and other applications* [1996] 5 MLJ 261, where Low Hop Bing J made a clear finding, after considering no less than three Supreme Court decisions on the matter, that the Rules of the High Court 1980 are operative and apply equally to both civil and criminal proceedings (the cases are *Dato' Mohamed Hashim Shamsuddin v Attorney-General,*

Hongkong [1986] 2 MLJ 112, *Gapari bin Kitingan v Attorney General, Malaysia* [1991] 1 MLJ 159; and *Ng Hong Choon v Timbalan Menteri Hal Ehwal Dalam Negeri, Malaysia & Anor* [1994] 1 ML] 562). A

However, it is to be noted, though it was not argued before me, that the above Supreme Court cases decided on the applicability of the Rules of the High Court 1980 to criminal proceedings in the High Court and not to the subordinate courts. So the question is whether the position is the same in the subordinate courts where the Subordinate Courts Rules 1980 apply. The Supreme Court in *Dato Hashim*'s case decided that the Rules of the High Court 1980 was validly and properly enacted in relation to both civil and criminal proceedings as it was enacted as a subsidiary legislation of its parent Act, the Courts of Judicature Act 1964. Section 3 of the parent Act which defines 'proceeding' clearly includes 'criminal proceedings'. Applying the same reasoning would make the Subordinate Court Rules 1980 applicable to criminal proceedings in the subordinate courts. This is because the parent Act of the Subordinate Courts Rules 1980, ie the Subordinate Courts Rules Act 1955, provides essentially the same definition of 'proceedings' at s 2. Therefore, it is my considered opinion that the session court was acting properly within it authority, when it struck off the respondent's application and reinstated it, even assuming that the application before itself in this matter was a criminal application. The provision on which the session court could have acted on are O 14 r 21 and O 28 r 5 of the Subordinate Courts Rules 1980. B C D E

On the third issue, the two cases cited by the learned DPP are not exactly authorities for the proposition as submitted by her, ie. that a proceeding under s 32(2) of the Act is a criminal and not a civil proceeding or matter. The two cases, ie *Tang Kheng Teong & Anor v Public Prosecutor* and *Kanagasavey a/l Sinayah v Public Prosecutor* decided on the procedure to be followed in an application under s 32(2) of the Act. Since there was a lacuna as to what procedure to follow, the procedural requirements of s 8 of the Act must, according to the two cases, be complied with by the public prosecutor. The issue before us is not the procedure to be followed in such an application but whether the application in question is a criminal or civil proceeding in nature.The learned DPP failed to appreciate this difference. Section 14 cited by the learned DPP therefore is also not directly relevant. Incidentally, the DPPs appearing before the session court on this matter did not follow the procedure as laid down in these two authorities cited by the learned DPP. According to these authorities the DPP should file the necessary affidavits deposing on the relevant matters as per the application conducted under s 8 of the Act. F G H

Before going further, it is interesting to note that had the learned DPP taken the trouble to read the judgment cited by her beyond merely citing the headnote, she would undoubtedly come across this passage in Vincent J's judgment in *Tang Kheng Teong & Anor v Public Prosecutor* (at p 495) which reads: I

> Cases of forfeiture is essentially a civil proceeding but it is conducted by a criminal court for reasons of convenience — as are maintenance proceedings. As such, in an application under s 8 of the Act the person affected may if he/she so wishes, give notice, as in civil proceedings, to the public prosecutor that he/she desires to cross-examine the deponent(s) of the supporting affidavit(s) (mentioned in s 8) and the court should allow him/her so to cross-examine.

In the case of *Soong Chee Kong v Public Prosecutor* which wholly concerns forfeiture of property under s 106 of the Customs Enactment 1937, the learned judge Taylor J had this to say (at p 7, third paragraph): .

> Where a claim is made it must first be considered by the Comptroller who may release the goods but cannot forfeit them. This covers cases of seizure on suspicion where circumstances are afterwards explained to the satisfaction of the Comptroller. It he does not release, he must refer the matter to court. The court "examines' the matter; this is essentially a civil proceeding but it is conducted by a criminal court for reasons of convenience — as are maintenance proceedings.

So, the authority cited by the learned DPP not only do not support her contention but in fact is an authority against her contention.

The principles determining whether an order is said to be made in a criminal case or matter and not in a civil case or matter are quite well established. In *Ang Gin Lee v Public Prosecutor* [1991] 1 MLJ 498, the Supreme Court, relying on the House of Lords' case of *Amand v Home Secretary & Anor* [1943] AC 147, briefly, laid down three important elements; ie firstly, the order must be a final order, the test is whether it had a final effect of disposing the rights of the parties; secondly, it must involve the consideration of a crime or an offence against the public law; and finally, there must be a charge preferred before some court or judicial tribunal having or claiming to impose punishment for the offence. The matter before the session court, ie the respondent's application under s 32(2) of the Act, obviously do not have any of the three aforesaid elements. So the submission by the learned DPP on this point is without basis. That being so, I find again that the orders of the session court in striking out and subsequently reinstating the respondent's application were made within its jurisdiction and authority.

What is left for me on this issue is to deal with the passage of Mohtar Abdullah J's decision in *PP v Cham Yoon Liang & Anor.* In that case, the session court struck off the application under s 32(2) of the Act because the DPP failed to refer to the session court under that provision within 14 days after the expiry of three months the property was seized. That decision was appropriate as the duty of the session court under that provision is to decide whether to release the property to the claimant or to forfeit it and not as provided in s 34 of the Act, to be concerned with trivial matters. However, each case depends on its own peculiar facts. In the present case, the application was referred by the DPP to the session court within the proper time frame. However, on the day fixed for the examination the respondent who was the claimant was absent. Under the circumstances, as I see from

the court's record, there was nothing much that the session court could do. As stated earlier, there was no evidence whether from the DPP or the claimant for the session court to properly decide on the matter either way. The DPP appearing before the session court on 6 January 2002 himself was not helpful. Apart from being present before the court, he had nothing to offer, whether in terms of suggestion or the necessary evidence. Reading the provision of s 34 of the Act, which was referred by the learned DPP, it is clear that the main consideration in the construction and interpretation of the Act is to actually give effect to the purpose of the Act and not to objections that are trivial, without merits and that which do not effect the substance or the issue before the court. Looking at the application for revision by the learned DPP before me as a whole, I would regretfully regard the the complaint of the learned DPP as trivial in nature, without merit and do not relate to the substance or the issue before the session court below. The whole proceeding there was to consider whether or not to release the motor vehicle to the respondent. At no time before me or at the session court below was there any assertion by the learned DPP that the respondent, to whom the motor vehicle was finally released, was not legally entitled to the motor vehicle. It was not part of the learned DPP's complaint before me that the order releasing the motor vehicle by the session court was wrong or improper. That order was in fact the whole substance and purpose of the application under s 32(2) before the session court. If to the learned DPP that final order was proper in substance, then going by s 34 of the Act, all the hassle of this revision would therefore be trivial and should not merit any consideration by this court. After all, the whole purpose the DPP referred the respondent's application was achieved and determined by the session court by the time this reference was applied for. The session court did ultimately make a decision to the claim of the respondent under s 32(2) of the Act. That was exactly as what was directed by the learned judge in *PP v Cham Yoon Liang & Anor.*

Before I conclude, the conduct of the learned DPP in the whole episode of this matter before the session court need some comment. If the learned DPP was serious in her conviction that the session court was functus officio after striking off the respondent's application on 6 January 2002, then she should have promptly pursued the matter with due diligence by filing an appeal against that session court's order. It was illogical for her to just argue and raise objection before the session court which, again according to her argument, was then functus officio by virtue of s 278 of the CPC. The session court even allowed an adjournment for the parties to further argue on her objections. She did not follow up on it but only applied for this revision before the High Court by a letter dated 17 June 2002, ie more than three months after the decision of the session court that she complained about. By then, the session court had ordered the release for the motor vehicle.

There were obvious contradictions between the learned DPP's stance before the session court on this matter with all the other DPPs who appeared there at various hearing. As a result, at the session court the DPPs appeared to be blowing hot and cold. The inevitable inference is that there

seems to be a total lack of coordination and proper direction between the DPPs on this matter at the court below. All these, also give rise to an unfortunate impression that the DPP's office is disorganized and haphazard in their conduct. This does not reflect well on the important office of officials dealing and deciding on matters relating to people's liberty and property. I can fully appreciate the dilemma faced by the session court in this matter and also the learned counsel for the respondent, who from my observation conducted himself professionally throughout, in not being able to be certain on the stance taken at any one time by the DPP in court despite their written undertakings. I hope that this is a one-off case of misunderstanding and that no such unnecessary episode will occur in the future. As a postscript to this application for revision, I have to point out that had the learned DPP's complaint been sustained she would be caught by her own argument. If the order of the session court is as insisted by her a 'judgment' within the meaning of the Criminal Procedure Code, then that order would have been appealable by virtue of s 307(1) of the CPC. As such, the appeal period would not only have lapsed long ago; but since the order is appealable, it is precluded from the revisionary jurisdiction of the High Court unless the learned DPP can show some exceptional circumstances or some very good reasons. Gopal Sri Ram JCA in *Mohd Dalhar bin Redzwan & Anor v Datuk Bandar, Dewan Bandaraya Kuala Lumpur* [1995] 1 MLJ 645 at p 655 states as follows:

> The second principle of settled law is that, save in exceptional cases and for very good reasons, there can be no resort had by a party to the revisionary jurisdiction of the High Court when the decision complained of is appealable and no appeal has been lodged: *Dorai Manickam v R* [1936] MLJ 261.

In conclusion, the application by the learned DPP to revise the decision of the session court in this matter is refused. However, based on the reasons I have given earlier, I hereby order that the order of the session court made on 28 May 2002 be set aside and matter be remitted back to the session court for the application to be reheard on an urgent basis with the respondent and the DPP if necessary application filing the necessary affidavit in support to enable the session court make a proper order in due course. The sum of RM1,500 is to be returned to the respondent as there is no basis in law for the sessions court to make such an order.

DPP's application for a revision dismissed but order of the sessions court set aside and matter remitted back to the sessions court for re-hearing.

Reportd by Sivapragasam Kumaran